

No. 10950

2404

United States
Circuit Court of Appeals
For the Ninth Circuit.

CONTRACTORS, PACIFIC NAVAL AIR
BASES and LIBERTY MUTUAL INSUR-
ANCE COMPANY, a Corporation,
Appellants,
vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, United States Employees' Compensa-
tion Commission for the Thirteenth Compensa-
tion District and WILLIAM DONOHO,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California
Southern Division

JAN 18 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

MR. CLAUDE R. WEINGAND,

939 Rowan Building,
Los Angeles, California

Attorney for Complainants and Appellants.

MR. FRANK J. HENNESSY,

United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California.

Attorney for Respondents and Appellees.

In the District Court of the United States,
Northern District of California,
Southern Division.

No. 23225-S

CONTRACTORS, PACIFIC NAVAL AIR
BASES, and LIBERTY MUTUAL INSUR-
ANCE COMPANY, a corporation,
Complainants,
vs.

WARREN H. PILLSBURY, DEPUTY COM-
MISSIONER, UNITED STATES EMPLOY-
ERS' COMPENSATION COMMISSION
FOR THE THIRTEENTH COMPENSA-
TION DISTRICT, and WILLIAM DONOHO,
Respondents.

COMPLAINT FOR INJUNCTION

Complainants complain of Respondents above
named and allege as follows:

I.

That complainant Contractors, Pacific Naval Air
Bases, are, and at all the times herein mentioned
have been joint venturers consisting of Hawaiian
Dredging Company, Ltd., a corporation, Raymond
Concrete Pile Company, a corporation, Turner
Construction Company, a corporation, Morrison-
Knudsen Company, Inc., a corporation, J. H. Pom-
eroy & Company, Inc., a corporation, W. A. Bechtel
Company, Inc., a corporation, Utah Construction
Company, Inc., a corporation, and John E. Byrne,

doing business as Byrne Organization, all doing business under the firm name and style of Contractors, Pacific Naval Air Bases. (Said joint venturers will hereinafter be referred, collectively, as "Contractors, Pacific Naval Air Bases".)

II.

That the Liberty Mutual Insurance Company, a corporation, is a corporation duly organized and existing under the laws of the State of Massachusetts, with offices in Los [1*] Angeles, California.

III.

That Respondent Warren H. Pillsbury is, and at all the times herein mentioned has been, Deputy Commissioner of the United States Employees' Compensation Commission for the Thirteenth Compensation District, which includes the State of California, and as such has been, and is, administering the provisions of the Longshoremen's and Harbor Workers' Compensation act, (Public 803—69th Congress) and Acts amendatory thereto extending the application of said Longshoremen's and Harbor Workers' Act to accidents occurring to persons employed at or in connection with air, military and/or naval bases outside the continental limits of the United States.

IV.

That commencing with the month of February to and including the month of September, 1942, the Respondent William Donoho was in the employ

*Page numbering appearing at foot of page of original certified Transcript of Record.

of complainant Contractors, Pacific Naval Air Bases as a male nurse on a construction job on Pacific Islands outside of the continental limits of the United States.

V.

That at said time and place said employer was insured against liability under said Compensation Act and amendments thereto by complainant Liberty Mutual Insurance Company, a corporation.

VI.

That on or about September 17, 1943 Respondent William Donoho filed his claim for compensation with Respondent Pillsbury, as Deputy Commissioner, claiming to have contracted tuberculosis resulting from conditions of employment including infectiousness of fellow-workers while Respondent Donoho was employed as male nurse and steward with Contractors, Pacific Naval Air Bases on the Island of Samoa. [2]

That said matter, being placed in issue by the Answer of Complainants herein, was thereafter heard before said Pillsbury, as Deputy Commissioner, and said Pillsbury on the 24th day of February, 1944 made an order awarding Respondent Donoho compensation and filed his decision entitled "Compensation Order Award of Compensation" in words and figures as follows; to-wit:

Claim for compensation having been filed herein under the Act of Congress of August 16, 1941, for an injury occurring in the course of employment on a military, air or naval base of the United States

outside the continental United States, in the Pacific Compensation District, in the Territory of Hawaii, and said claim having been transferred to the undersigned Deputy Commissioner, 13th Compensation District, by the Deputy Commissioner of said Pacific Compensation District, with the approval of the United States Employees' Compensation Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following.

FINDINGS OF FACT

That between March and September, 1942, the claimant above named was in the employ of the employer above named for the performance of service at a military base in a possession of the United States in the South Pacific region, in the Pacific Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by said Act of Congress of August 16, 1941, and that the liability of the employer for compensation under said Acts was insured by Liberty Mutual Insurance Company.

[3]

That while employed on said base claimant contracted an active pulmonary tuberculosis as a result of conditions of his employment as follows: Upon arriving at the base in March 19, 1942, claimant worked a short time as a male nurse. When the

work was taken over by military authorities claimant worked for some weeks driving a truck. In the course of this work during the rainy season which prevailed at that time, he was wet through four or five times a day by rain. After some weeks he was assigned to work as a steward of the mess hall and continued in such capacity until he left the base in September. During this time he worked at least 12 hours a day and at times sixteen to eighteen hours a day. The temperature at said base was between 90 and 100 degrees with high humidity most of the time. After working at said base two or three months he commenced to feel great fatigue which has continued from that time. He arrived at California after completion of this contract on September 25, 1942 and has done no work since because of said fatigue. In the Spring of 1943 he was examined for military service at which time he was found to be suffering from active pulmonary tuberculosis and was put in a hospital shortly afterwards. He is still hospitalized at the present time. That said active tuberculosis was caused to develop and become disabling either by contraction of original infection from unknown sources or by reactivation of a previous undiscovered and arrested pulmonary tuberculosis, by conditions of his employment above mentioned, principally overwork and exposure;

That defendants had notice of claimant's contention within proper time; [4]

That the employer did not furnish claimant with medical treatment, etc., in accordance with Section

7(a) of the said Act, after being notified of its discovery;

That claimant was thereafter hospitalized in the Los Angeles County tuberculosis hospital at Olive View;

That defendants are liable for the reasonable cost of said care, if charge be made therefor, the amount to be fixed by further proceedings if the parties are unable to agree thereon;

That the average annual earnings of the claimant herein at the time of his injury exceeded the maximum sum prescribed by said Act of \$1950.00, his actual earnings in said employment being \$85.00 a week;

That as the result of the injury sustained the claimant was wholly disabled from September 25, 1942 indefinitely, and he is entitled to compensation at \$25.00 a week for such disability to and including the date of the hearing, October 6, 1943, 53 6/7 weeks, amounting to \$1346.42, and thereafter at said rate until the termination of his disability or other further order of the Deputy Commissioner. That no compensation has been paid;

Upon the foregoing facts, the Deputy Commission makes the following:

AWARD

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to the claimant compensation as follows: The sum of \$1346.42 forthwith, as of October 6, 1943, and the further

sum to claimant of \$25.00 a week thereafter, payable in installments each two weeks until the further order of the Deputy Commissioner. [5]

Given under my hand at San Francisco, California, this 24th day of February, 1942.

WARREN H. PILLSBURY

Deputy Commisisoner

13th Compensation District."

VII.

That no proceedings for the suspension *of* setting aside of said Compensation Order filed February 24, 1944 have ever been instituted as provided in subdivision (b) of Section 921 of said Act, or elsewhere or at all. That under the provisions of said Act the said Order became effective when filed on February 24, 1944 and except for these proceedings to suspend or set aside said Order would become final at the expiration of thirty days after said February 24, 1944.

VIII.

That said Compensation Order is not in accord with law in the following particulars:

(a) That there was no substantial evidence to warrant the Findings of Fact in said order that said respondent Donoho while employed, as in said Compensation Order alleged, contracted pulmonary tuberculosis as a result of conditions of his employment.

(b) That there is no substantial evidence to support the Findings of Fact that claimant is entitled

to compensation at the rate of \$25.00 per week or any other rate.

(c) That said Finding of Fact, and particularly those portions thereof which read: "That said active tuberculosis was caused to develop and became disabling either by contraction of original infection from unknown sources or by reactivation of a previous undiscovered and arrested pulmonary tuberculosis, by conditions of his employment above mentioned, [6] principally overwork and exposure" do not support the Award of Compensation made in said Compensation Order.

Complainants are informed and believe and on such information and belief allege that Respondent Donoho will be unable to pay to complainants herein the amounts which complainants are required to pay by reason of said award and that unless the enforcement of said Award be stayed by injunction herein complainants will suffer irreparable damage and injury.

IX.

That the complainants have no adequate nor any remedy other than by these proceedings which are brought pursuant to the provisions of Section 921 of said Act and Section 1653, Subdivision (b) of the Defense Bases Act, which provide that if not in accordance with law a compensation order may be suspended or set aside in whole or in part through injunction proceedings brought by any party in interest against the Deputy Commissioner making the order and instituted in the District

Court of the judicial district wherein is located the office of the Deputy Commissioner whose compensation order is involved if his office is located in a judicial District and that proceedings for suspending or setting aside of compensation orders whether revoking a claim or making an award shall not be instituted otherwise than as provided in said Section 921 and 1653, subdivision (b).

X.

That all of said proceedings before the said Deputy Pillsbury are contained in a file of said Deputy Commissioner under Claim Number DB-P-1-8359, together with the testimony of all witnesses taken before the said Deputy Commissioner in connection with said alleged injury of said Donoho. [7]

That the Deputy Commissioner should be required to file with the clerk of this court, at a time to be fixed by the court, a certified copy of all proceedings had before him, together with all exhibits, transcripts of testimony, letters and documents of every nature and description received by said Deputy Commissioner in consideration of said claim.

Wherefore, complainants pray that process in due form of law according to the course of this Honorable Court may issue and that respondents may be cited to appear and answer all and singular the matters hereinbefore set forth and that the order of said Deputy Commissioner filed February 24, 1944 be set aside and declared a nullity and that a mandatory injunction be issued herein—setting aside and restraining enforcement of said purported

order dated February 24, 1944, and that the respondents be permanently enjoined from making or attempting to make any further orders with respect to said proceeding; that pending the hearing of the cause or in less than three days notice to the parties interested and the Deputy Commissioner, this Honorable Court issue an interlocutory injunction allowing the stay of such payments pending the determination of this cause; and for such other further and different relief as to the Court may seem justified, and for costs incurred herein.

CLAUDE F. WEINGAND

Attorney for Complainants.

[8]

State of California,
County of Los Angeles—ss.

Claude F. Weingand being first duly sworn, on behalf of the above named complainants, deposes and says: That he is attorney for the above named complainants; that he has read the foregoing complaint for injunction and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true;

That the reason this verification is made by this affiant instead of an officer of said complainants is that there is no officer present within the County of Los Angeles of either of said complainants to

make the verification for and on behalf of said complainants.

CLAUDE F. WEINGAND

Subscribed and sworn to before me this 22nd day of March, 1944.

(Notarial Seal) BETTY JANE SMOCK

Notary Public in and for said County and State.

My Commission Expires July 8, 1947.

[Endorsed]: Filed Mar 24, 1944. [9]

[Title of District Court and Cause.]

MOTION TO DISMISS BILL OF
COMPLAINT

Comes now Frank J. Hennessy, United States Attorney, on behalf of respondent Deputy Commissioner Warren H. Pillsbury, and moves the court to dismiss the Bill of Complaint on file herein on the following grounds:

I.

That the Bill of Complaint herein filed be dismissed for want of allegations showing that complainants are entitled to the relief prayed for;

II.

That the Bill of Complaint on file herein be dismissed in that

(1) It does not appear from the face of said Bill of Complaint in what manner the Findings of

Fact heretofore made by Respondent Pillsbury are not supported by substantial evidence;

(2) It does not appear from the face of said Bill of Complaint in what manner the Compensation Award made by Respondent Pillsbury is not supported by substantial evidence;

(3) It does not appear from the face of said Bill of Complaint in what manner the Compensation Order made by Respondent Pillsbury is contrary to law.

Wherefore, Respondent Pillsbury prays that his Motion to Dismiss be granted and that said Bill of Complaint be dismissed and for such other relief that he may be entitled to receive in the premises.

FRANK J. HENNESSY

United States Attorney

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Jul 6 1944 [10]

In the United States District Court, for the Northern District of California, Southern Division.

No. 23,225-S

CONTRACTORS, PACIFIC NAVAL AIR-BASES and LIBERTY MUTUAL INSURANCE COMPANY, a corporation,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner, United States Employees Compensation Commission for the Thirteenth Compensation District, and WILLIAM DONOHO,
Respondents.

ORDER DISMISSING BILL

Ordered:

1. The prayer of complainants' complaint for injunction is denied.
2. Respondents' motion to dismiss the bill of complaint is granted.

Dated: September 13, 1944.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Sep 13 1944. [11]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Respondents, Warren H. Pillsbury, Deputy Commissioner, United States Employees Com-

pensation Commission for the Thirteenth District, William Donoho and Frank J. Hennessy, Attorney for Respondent, Warren H. Pillsbury:

Notice Is Hereby Given that Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company, a corporation, complainants in the above entitled action in the above entitled cause, do hereby appeal to the United States Circuit Court of [12] Appeal for the Ninth Circuit from the Order and Judgment of Dismissal entered in the within action on or about the 13th day of September, 1944.

Dated this 25th day of October, 1944.

CLAUDE F. WEINGAND

Attorney for Complainants.

[Endorsed]: Filed Nov 16 1944. [13]

[Title of District Court and Cause.]

Premium charged for this bond is \$10.00 Dollars per annum.

UNDERTAKING FOR COSTS ON APPEAL

Know All Men By These Presents, that the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Warren H. Pillsbury, Deputy Commissioner, United States Employees Compensation Commission for the Thirteenth Compensa-

tion District, and William Donoho, Respondents in the above entitled matter, in the penal sum of Two Hundred Fifty and No/100 — — Dollars (\$250.00), to be paid to the said Warren H. Pillsbury, Deputy Commissioner, United States Employees Compensation Commission for the Thirteenth Compensation District, and William Donoho, their successors or assigns, or legal representatives, for which payment well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The Condition of the Above Obligation Is Such, that Whereas, Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company, a corporation, have appealed or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment dismissing the Complainants' Complaint in said Action, and entered on September 13th, 1944, by the United States [14] District Court of the Northern District of California, Southern Division, in the above entitled action.

Now, Therefore, if the above named Complainants, Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company, a corporation, shall prosecute said appeal to effect and answer all costs which may be adjudged against them if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void; otherwise to remain in full force and effect.

It Is Hereby Agreed by the Surety that in case of default or contumacy on the part of the Princi-

pal or Surety, the Court may, upon notice to them of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation, and award execution thereon.

Signed, sealed and dated this 8th day of November, 1944.

(Seal)

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND

By W. M. WALKER

Attorney in Fact

Attest:

S. M. SMITH

Agent

Examined and recommended for approval as provided in Rule 13.

.....

Attorney

Approved this day of, 1944.

.....

State of California,

County of Los Angeles—ss.

On this 8th day of November, 1944, before me, Theresa Fitzgibbons, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. M. Walker known to me to be the Attorney-in-Fact, and S. M. Smith known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity

and Deposit Company of Maryland thereto and their own names as Attorney-in-Fact and Agent, respectively.

(Seal) THERESA FITZGIBBONS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 3, 1946.

[Endorsed]: Filed Nov 16 1944. [15]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY ON
THEIR APPEAL

I.

That the evidence is insufficient as a matter of law to support the findings of fact made by Respondent, Warren H. Pillsbury, Deputy Commissioner, and in favor of William Donoho.

II.

That that portion of the findings of fact which reads

“That said inactive tuberculosis was caused to develop and become disabling, either by contraction of original infection from unknown sources, or by reactivation [16] of a previously undiscovered and arrested pulmonary tuberculosis, by conditions of his employment above mentioned, particularly overwork and exposure,”

does not support the award of compensation made in favor of the Respondent, William Donoho, by the Respondent, Warren H. Pillsbury.

III.

The United States District Court erred in granting Respondent's Motion to Dismiss Complainants' and Appellants' Bill of Complaint.

Dated this 25th day of October, 1944.

CLAUDE F. WEINGAND

Attorney for Complainants.

[Endorsed]: Filed Nov 16 1944. [17]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON
APPEAL

To the Clerk of the United States District Court
for the Northern District of California, Southern
Division:

You will please prepare a transcript of the record in this cause to be used upon appeal in the above entitled cause, embodying the following:

1. Complaint.
2. Motion to Dismiss Bill of Complaint.
3. Transcript of testimony at hearing before United States Employees Compensation Commission, before Warren H. [18] Pillsbury, Deputy Commissioner, Thirteenth Compensation District, held October 6, 1943.

4. Order of Dismissal, dated September 13, 1944.
5. Notice of Appeal.
6. Supersedeas and Cost Bond on Appeal.
7. Designation of Record on Appeal.
8. Statement of Points upon which Appellants Intend to Rely in the appeal in this case.
9. Clerk's Certificate.

Dated this 25th day of October, 1944.

CLAUDE F. WEINGAND

Attorney for Complainants
and Appellants.

[Endorsed]: Filed Nov 16, 1944. [19]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of *Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company, a corporation. Complainants, vs. Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission for the Thirteenth Compensation District, and William*

Donoho, Respondents, No. 23225 S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Five Dollars and Seventy-five Cents (\$5.75) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 20th day of December, A. D. 1944.

(Seal)

C. W. CALBREATH,

Clerk

By M. E. VAN BUREN

Deputy Clerk. [20]

United States Employees' Compensation
Commission

13th Compensation District

In the matter of the claim for compensation under the Act of Congress of August 16, 1941 extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air and naval bases of the United States.

Case No. DB-P-1-8359

WILLIAM DONOHO,

Claimant.

against

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer.

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

CERTIFICATION

This is to certify that I am the duly appointed, qualified and acting Deputy Commissioner of the United States Employees' Compensation Commission under the Longshoremen's and Harbor Workers' Compensation and the Defense Bases Compensation Act (Act of Congress of August 16, 1941) for the Thirteenth Compensation District, comprising the State of California and other portions of the United States;

That there has recently been pending before me as said Deputy Commissioner, a claim for compensation transferred to me under said Acts of William Donoho against Contractors, Pacific Naval Bases, employers, and Liberty Mutual Insurance Company, insurance carrier, my File No. DB-P-1-8359.

That the attached are originals or true and correct copies of pleadings, transcript of testimony, and exhibits in said file, as listed below, being a copy of the entire file therein so far as relevant to a review of the above proceedings:

1. U. S. 203, Employee's Claim for Compensation.

2. Transcript of Testimony of October 6, 1943, with attached Exhibit:

Exhibit "A" Letter of William Donoho, dated April 15, 1943.

3. Copy of report of Dr. Frank Porter Miller of April 23, 1943.

4. Copy of Compensation Order of February 24, 1944.

Given under my hand at San Francisco, Calif., this 3d day of April, 1944.

WARREN H. PILLSBURY

Deputy Commissioner

Thirteenth Compensation

District

:

To be filed in triplicate
Form US-203

United States Employees' Compensation
Commission

Office of Deputy Commissioner
Warren H. Pillsbury, 13th District
Case No. DB-P-1-8359

Administering Longshoremen's and Harbor
Workers' Compensation Act as Extended by Act
of Congress of August 16, 1941—Defense Bases
Act.

EMPLOYEE'S CLAIM FOR
COMPENSATION

(To be filed with the Deputy Commissioner in
accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee Donoho, William. Em-
ployee's check No.....

2. Address: Street and No. Olive View Sana-
torium City or town Olive View, Calif.

3. Sex Male. Age 29. Married, single, wid-
owed Married.

4. Do you speak English? Yes. Nationality
American.

5. State regular occupation Male nurse, and
steward.

6. What were you doing when injured? Engag-
ing in regular employment.

7. (a) Wages or average earnings per day,
\$10.00 plus full maintenance. (Include overtime,

board, rent, and other allowances.) (b) Per week, \$..... (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when.....

8. Were you paid full wages for day of accident? Yes.

EMPLOYER

9. Employer Pacific Naval Air Bases, Alameda, Calif.

10. Office address: Street and No. PO Drawer F.
City or town Alameda.

11. Nature of business Construction.

THE INJURY

12. Place where injury occurred Samoa. (Give place, and name of vessel).....

13. Name of foreman William Miller.

14. Date of accident or first illness, the ? day of ?, 192., at o'clockM.

15. How did accident happen or how was occupational disease caused? Worked with at least two persons who had active tuberculosis; extremely high temperatures to work under.

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Tuberculosis resulting from conditions of employment, including infectiousness of fellow workers.

17. On what date did you stop work because of injury? Condition discovered by Army Draft after completing work with above company.

18. Have you returned to work? (Yes or No.)
No. If "yes," on what date?....., 192...

19. Does injury keep you from work? (Yes or No.) Yes.

20. Have you done any work in period of disability? No.

21. Have you received any wages since injury?
No. If so, from and to what date?.....

22. Has injury resulted in amputation? No. If so, describe same.....

23. Did you request your employer to provide medical attendance? Yes. Has he done so? No.

24. Attending physician: Name..... Address
.....

25. Hospital: Name..... Address.....

NOTICE

26. Have you given your employer notice of injury? (Yes or No.) Yes. When? 4-8-43.

27. If such notice was given, to whom? W. H. Walthall, Pacific Naval Air Bases, PO Drawer F, Alameda, Calif.

28. Was it given orally or in writing? In writing.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by WILLIAM DONOHO
Claimant.

Dated September 15, 1943.

Mail address Olive View Sanatorium, Olive View,
Calif.

[Stamped]: Received Sept. 7, 1943. District No.
13.

[Stamped]: U. S. Employees Comp. Comm, Pa-
cific District. Received Sep 22 1943.

United States Employees' Compensation
Commission

Before Warren H. Pillsbury,
Deputy Commissioner
13th Compensation District
Case No. DB-P-1-8359

WILLIAM DONOHO,

Claimant,

vs.

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer.

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

TRANSCRIPT OF TESTIMONY
AT HEARING

Pursuant to notice, this matter was heard before
Warren H. Pillsbury, Deputy Commissioner,
United States Employees' Compensation Commis-
sion at Olive View Sanitarium, Olive View, Cali-

ifornia, on Wednesday, the 6th day of October, 1943, at 11:00 o'clock a.m.

Appearances:

Claimant present in person.

Defendants represented by Claude F. Weingand, Attorney at Law.

Helen Schulke, reporter. [1*]

Mr. Pillsbury: Hearing on claim for compensation, hearing held at Olive View Sanitarium, Olive View, California. Claimant present in person; defendants represented by Mr. Weingand.

This claim arises under the Defense Bases Act, Act of Congress of August 16, 1941, extending the provisions of the federal Longshoremen's and Harbor Workers' Compensation Act to employees on air, military and naval bases of the United States outside the continental United States.

The claim alleges contraction of pulmonary tuberculosis at a defense base of the United States at an island in the Pacific Ocean, named in the claim. The claim is within the primary jurisdiction of the Deputy Commissioner of the Pacific Compensation District, but has been transferred by him to me for hearing and decision, with the approval of the Employees' Compensation Commission.

Mr. Weingand, what is the defendants' position?

Mr. Weingand: That if Mr. Donoho suffers from tuberculosis he did not receive it in the course of his employment for the Contractors PNAB, nor

* Page numbering appearing at foot of page of original Reporter's Transcript.

did his tuberculosis arise out of his employment.

Mr. Pillsbury: The following facts are agreed to by the parties:

1. Claimant, William Donoho was in the employ of defendant, Contractors, Pacific Naval Air Bases, at the [2] island above referred to throughout the period covered by the claim, and that liability of the employer for compensation under the Act was secured by defendant, Liberty Mutual Insurance Company.

2. The claim is within the provisions of said Defense Bases Act and the jurisdiction of the appropriate Deputy Commissioners.

3. No claim is made of intoxication or wilfully self-inflicted injury.

4. Notice or knowledge of claimant's contention within the proper time is admitted.

5. Claimant's average earnings at said time may be taken for the purposes of this proceeding at \$85 a week, including maintenance.

6. No compensation has been paid.

7. Claimant has been to no expense for medical treatment. Claimant is now hospitalized at the tubercular hospital of the County of Los Angeles at Olive View.

The only issues are:

1. Whether claimant's tuberculosis is the result in whole or in part of any occupational exposure in the course of his work sufficient to constitute an injury, as said term is defined in said Act.

2. Whether such injury occurred in the course of or arose out of his employment. [3]

3. Extent and duration of disability.

Anything else?

Mr. Weingand: Tentatively until we get some testimony, the statute of limitations. If the testimony develops as I believe it will, then I will withdraw the issue.

Mr. Pillsbury: Will you be sworn?

WILLIAM DONOHO,

claimant, being first duly sworn, testified as follows:

Mr. Pillsbury: Q. Your name is William Donoho? A. Yes.

Q. During what period of time were you employed at this island base?

A. September—I mean February to September.

Q. Of what year? A. Of '42.

Q. 1942? A. Yes.

Q. You arrived there in February, 1942?

A. No, it was March, around the first part of March.

Q. And when did you leave?

A. The States?

Q. No, when did you leave the base?

A. In September, the first part of September.

Q. What kind of work did you do?

A. Well, I signed a contract as a male nurse. When [4] I arrived there was no doctor, and the Navy people took it over, our medical care, and then I went to work driving a truck.

Q. You did not work as a nurse?

A. No, just a little first aid station, and it was—

(Testimony of William Donoho.)

really you could not call it a first aid station, just a first aid container, for cuts and bruises.

Q. Then you drove a truck? A. Yes.

Q. And what was the truck used for?

A. Construction, hauling dirt.

Q. Have you ever had tuberculosis before that you know of?

A. Not to my knowledge.

Q. When did you first commence to feel ill after your arrival there?

A. Oh, I will say two or three months, approximately that time. You know how it is, maybe one day you feel bad, and the next day pretty good.

Q. And what did you first notice?

A. Fatigue, constant fatigue, and although we were working long hours in a tropical climate, hot weather, rainy season, all of us felt that way, so we did not pay much attention to it. I did not pay much attention to it until I came home. [5]

Q. When was the first diagnosis made?

A. When they started to draft me.

Q. When?

A. Some time the first part of the year.

Q. Can you fix the date?

A. No, not exactly.

Mr. Weingand: Can you fix the month, possibly with reference to the holidays?

The Witness: That was what I was thinking of. I think it was in February, if I am not mistaken.

Mr. Pillsbury: Q. 1943?

(Testimony of William Donoho.)

A. '3, yes. I could not be sure because I was in such confusion after I found out.

Q. Why did you leave the work?

A. Completion of the work.

Q. Did you work after you returned?

A. No, I spent my time building myself up.

Q. When did you arrive on the mainland on your return? A. In September.

Q. Did you do any work in Honolulu on the way back?

A. No, we came directly from the island.

Q. Where did you come to on the mainland?

A. San Diego.

Q. Is your home there?

A. No, it is in Los Angeles. [6]

Q. What did you do in San Diego?

A. San Diego? We went through the customs office and boarded a train for San Francisco.

Q. Were you in San Francisco?

A. No, I got off in Los Angeles.

Q. And then where did you live until September? A. 1512 West 27th.

Q. Is that your home?

A. No, I have no home—an apartment.

Q. Did you do any work during that time?

A. No.

Q. How did you feel during that period?

A. Well, you know, outside of fatigue I felt fairly good, and I gained in weight.

Q. Were you able to work during that time?

(Testimony of William Donoho.)

A. No, I don't think I would have been, I don't think I could have given a man a full day's work.

Q. Tell me more about your first discovery of your condition, when you first got a diagnosis.

A. When I first got a diagnosis was through the Army, and they referred me to the City Health branch, and the next day I went up and they examined me and stated the same tuberculosis as the Army, and I was fluoroscoped and sent to the General Hospital for x-rays, and they run sputum tests and found it positive. [7]

Mr. Weingand: Q. Is that the first time you knew you had tuberculosis? A. Yes.

Mr. Weingand: I will withdraw the statute.

Mr. Pillsbury: Q. Going back to your work on the island, do you attribute your development of tuberculosis to anything connected with your work there?

A. Yes, I do, because I was examined by the Navy in Long Beach before I left, and they found me free of tuberculosis; and when I went over there——

Q. How do you know?

A. I have their medical.

Q. Have you it here? A. Yes.

Q. May I see it, please? Did they make any sputum test for tuberculosis, or was it a routine physical examination?

A. No, when I had my blood test they flouro-scoped me. These are the instructions for the No. 8 examination.

(Testimony of William Donoho.)

Q. Produces document, certificate of medical examination, dated February 22, 1942, signed by B. C. Shackford, Lt. Commander, M.C., U.S.N.R. Line 8 relating to lungs reads: "Lungs: Right, normal; left, normal. History of tuberculosis, denied."

A. Instruction for examination is on the back in paragraph 8. [8]

Mr. Pillsbury: The clause reads: "8. Lungs: It is necessary that the auscultatory cough be used. If tuberculosis is present state whether active, or arrested; if arrested state your opinion as to how long it has been quiescent. Sputum to be examined for tubercle bacilli on suspected cases."

Document returned to claimant.

Q. You say the fluoroscope test was used?

A. Yes, they examined me on one floor, and sent me to another floor to have my blood tested.

Q. Is that a routine test, or especially for your benefit? A. I could not say.

Q. Was any sputum test made? A. No.

Q. What in the nature of your work on the Island do you connect with your condition?

A. Well, Mr. Pillsbury, the first thing is climatic, conditions there were very bad in the rainy season, it rains approximately 190 inches a year in the rainy season.

Mr. Weingand: How much?

A. Around 190 inches, which makes working conditions on the outside disagreeable, no matter how much protection is worn against it. Then when I was driving a truck the equipment was so

(Testimony of William Donoho.)

that we got soaked every time it rained, four or five times a day. And then after I drove a truck for a time, [9] one of the stewards left and I took his place because I had a little information on food, and from then on, why, I worked a considerable number of hours a day.

Mr. Pillsbury: Q. How long?

A. Well, some months I was paid for 12 hours a day.

Q. Did you work 12 hours a day?

A. Sometimes I worked longer than that, other days I could swear 16 to 18 hours a day.

Q. What kind of work? A. Steward.

Q. What did you do?

A. Running the mess hall.

Q. You did not do any hospital work while there?

A. No. There was one patient that had the measles and they had him isolated and I would go over once a day and check with him to see if he wanted anything.

Q. That was measles.

A. That was all—nothing to that.

Q. How long would you say you worked over 12 hours a day?

A. Oh, I will say four months.

Q. And that was towards the beginning or end?

A. Toward the end.

Q. Was it during that time that you became more fatigued? [10] A. Yes.

Q. What was the temperature there?

(Testimony of William Donoho.)

A. Well, the temperature, I would say, which we never did check very often, I would say was around 90 and 100, with humidity very high. That is my feeling or belief. I could not say if it is correct or not.

But there is another fact I would like to bring out, is that we were employing natives there. They were working in the mess hall, and these native food handlers, we never could get them to give the natives a physical examination, and I think tuberculosis among the natives in the island might be common.

Q. Do you know if any of the natives who worked there had tuberculosis?

A. No, because we never could get physical examinations.

Q. Did any of them cough? A. No.

Q. Were any taken ill, that you know of?

A. Yes, but I could not say with tuberculosis, because they would say "We are going to quit," and you find they were sick, or just tired of working.

Q. You have no definite information then or observation that any of the natives who worked with you either had tuberculosis, or were sick with a condition resembling tuberculosis? [11]

A. No, but I have heard some of the other employees—there is another man by the name of Bob Breman, and he is a patient at Acton, now——

Q. Where is that?

A. It is up toward——

(Testimony of William Donoho.)

Mr. Weingand: Toward Mojave, is it?

A. Yes, near Lancaster.

Mr. Pillsbury: Is that a tuberculosis hospital?

Dr. Ford: It is associated with Olive View, I believe.

Mr. Pillsbury: Q. Do you know whether he has been diagnosed as having tuberculosis?

A. Yes.

Q. What was your contact with him on the job?

A. Well, going over on the boat. While in—he drove a truck the same as I did, and while working in the mess hall, and he is a friend of mine, and casual visits.

Q. Was he known to be ill before you left?

A. I could not say. I do not think so because he went through the Navy examination like I did.

Q. I mean before you returned.

A. No, the only thing, he showed fatigue constantly and loss of weight, as I did, and as I say all of us did that. I have heard since I have been here, a man by the name of Forbes——

Q. Mr. Breman, was he coughing on the job?

[12]

A. I could not state. I did not hear him.

Q. Were you unusually close to him?

A. Well, just like under any working conditions. Sometimes yes and sometimes no.

Q. He did not cough in your face?

A. That is more or less something that happened a year ago. It is hard to say yes or no.

(Testimony of William Donoho.)

Q. You mentioned another man.

A. Forbes.

Q. Forbes. What about him?

A. His address is PNAB, but he came back on an earlier boat; and I understand the Navy authorities diagnosed his condition as tuberculosis, but did not confine him.

Q. Do you know where he is now?

A. No. PNAB would have his address.

Q. Do you know definitely whether he has tuberculosis or not?

A. No, I can't say. It is only from what I have heard, and that was talked about while we were on the island.

Q. Did you have any close contact with him?

A. The only contact, I was over his cabin. He was in there when I would check up, and I saw him in the mess hall.

Q. Was he coughing?

A. Not to my knowledge.

Q. You do not recall any time he coughed or hemorrhaged [13] when you were close?

A. No.

Q. Do you know of any other possible exposure?

A. No, although I have heard several of the boys state that several of them has broke down. I do not know whether it is tuberculosis or something else.

Mr. Pillsbury: Any questions, Mr. Weingand?

Mr. Weingand: Q. Mr. Donoho, approxi-

(Testimony of William Donoho.)

mately how many persons were on the island while you were there?

A. You mean the natives?

Q. The contractors?

A. Well, say half of them, or about 100, came home before I did. There was maybe approximately 300. This is approximately, because I could not say.

Q. When you said you served 250 meals a day, you mean that is per meal?

A. No, it is per day.

Q. When does the rainy season begin on the island?

A. If I remember right—I could not say, it is like our winter months, and it comes off—let me get this right. I will have to tell you how it happened. I arrived the first part of March, and the winter months was coming on, so it would be the opposite of here because it is below the equator.

Q. Was it the rainy season when you arrived?

A. No, it was about a month before the rainy season [14] started, approximately that, and it lasted up until approximately a month before we came home.

Q. That would be April to August?

A. Approximately.

Q. Living accommodations, Mr. Donoho, had they been prepared for you when you arrived?

A. Yes.

Q. Will you describe the type of accommodations?

A. Well, the type of accommodations varied.

(Testimony of William Donoho.)

Q. What did you have?

A. Well, first, I had a room with another man, a carpenter foreman. It was a small room, about half the size of this, with a little wash basin. Before we left to come home, when the Seabees took over, we went back to——, about two weeks before we come home, and in those two weeks we slept four to the room, in double deck beds.

Q. With the exception of that last two weeks, you shared a room with another employee?

A. That is right.

Q. Did that employee to your knowledge have tuberculosis?

A. No, not to my knowledge. At first I lived with—his name was—he is a carpenter foreman, and his name is Strub—no, Shuberg, and he did run down like the rest of us, and he went to see the Navy doctor and they sent him to [15] ——to have his teeth extracted, and when he came back he was feeling better, and from then on he kept at his work.

Q. As far as you know he did not have tuberculosis?

A. No, that is the only sickness I know Shuberg—I can't remember his name.

Q. Was the construction of the living accommodations, was it of new construction? A. Yes.

Q. It was not a native——

A. It was not a native dwelling.

Q. And how high off the ground was its floor?

A. Three or four feet.

(Testimony of William Donoho.)

Q. How long were you driving a truck?

A. Let's see. Oh, I will say two to three months. I never did keep much track of time down there, and we worked seven days a week, and one month came and went.

Q. Did the truck have a cab?

A. Yes, but no doors.

Q. Did you have a raincoat? A. Yes.

Q. Mr. Donoho, when you went to work as a steward, I take it you had charge of procuring necessary supplies?

A. Under a man named Miller, chief steward.

Q. Did you make out menus? A. Yes. [16]

Q. Did you do any actual cooking? A. No.

Q. Did you do any of the manual work of preparing the food?

A. No, I never touched the food at all.

Q. I take it then that your work was in a supervisory capacity? A. Yes.

Q. Did your work keep you inside or outside most of the time?

A. About half and half.

Q. What type of stewarding would require you to be outside at least six hours or seven hours a day?

A. Carrying food supplies and overseeing the upkeep of the outside living quarters.

Q. Do you remember, Mr. Donoho, in the month of April of this year when your statement of this experience was taken by a representative of the insurance company?

A. Yes, some young lady took it.

(Testimony of William Donoho.)

Q. That was taken in the office of the insurance company in Los Angeles? A. Yes.

Q. Did you tell the girl that you had been exposed to possible tuberculosis infection from these two fellow employees whose names you have given us? [17] A. Yes.

Q. And was that put in the statement?

A. I do not know if she put it in or not. It was a four or five page statement, and I had to mark initials on any mistakes in her statement, and signed it also, and I never read it over completely from top to bottom or start to finish, and I could not say if she put it in the statement or not.

Q. At that time was it your belief that your condition was probably due to contact or an infection from these other fellow employees?

A. From exposure of work and living conditions.

Q. Mr. Donoho, is that your signature at the bottom of page 1? A. Yes.

Q. Will you look at the last page? Will you please say if that is your signature?

A. Yes.

Q. Read the sentence which immediately precedes your signature.

A. You mean I have read the four pages and it is true? Yes.

Q. You did read it? A. Glancingly.

Q. I asked you whether you read it?

A. Glancingly I did. [18]

(Testimony of William Donoho.)

Q. Did you tell her at that time that you had this possible infection?

A. Well, we talked about it.

Q. Will you read the statement and see if there is any mention made of that phase of your claim?

A. From top to bottom of the letter?

Mr. Pillsbury: The letter will speak for itself.

The Witness (After reading): No, it is not in there.

Mr. Weingand: I offer it in evidence.

Mr. Pillsbury: Received as Exhibit 1.

Otherwise does this statement seem to be a fair report of what you told the lady?

A. As well as I can remember.

Q. Did you discover anything that seems specifically incorrect or that you did not say or that is not true?

A. No.

Mr. Pillsbury: Any other questions?

Mr. Weingand: Q. Are you a registered nurse?

A. No.

Q. Practical nurse?

A. That is right: I received my training in the Army.

Q. Had you handled or taken care of any tuberculosis patients prior to your employment on the island?

A. No, I never have to my information, or to any doctor's information, because we were told that if a doctor can make a [19] diagnosis while on the case it is wise to ask, and he generally lets you know

(Testimony of William Donoho.)

before you go on a case so you can use all precautions.

Q. You never lived with this employee Bob Breman, did you? A. No.

Q. Did you live with Forbes? A. No.

Q. So that your only contact with these two individuals was the same kind of contact that you had with the remainder of the 300 men, you would see them at work, at the mess hall, and at other places?

A. That is right, in our daily contact at work.

Q. While you were on the island did you have night sweats? A. No.

Q. Did you ever have any P.M. or afternoon temperature? A. Not that I know of.

Q. Your only complaint was fatigue?

A. After I was on the job, yes.

Q. When you returned to Los Angeles, I take it you lived here in Los Angeles from September of 1942 until you came to Olive View?

A. That is right.

Q. When did you enter this institution?

Dr. Ford: April 21st. [20]

Mr. Weingand: What did you do from September of 1942 until April 21st?

A. Well, I came back like I said, and I rested as much as I could, and I took a trip back east.

Q. Where?

A. Leavenworth, Kansas, and Columbia, Tennessee.

Q. How did you go? A. By train.

(Testimony of William Donoho.)

Q. Return by the same method?

A. Yes, partly.

Q. How did you come back?

A. I rode with a friend from Columbia, Tennessee, to Oklahoma, an Army officer at Fort Sill.

Q. During the period of time you lived in Los Angeles after your return from the island, did you engage in any form of recreation?

A. No—well, like say a walk.

Q. Picture shows?

A. No, because I didn't—I just didn't feel like—you know, you don't feel like it.

Q. Did you go to church? A. No.

Q. Just stayed around the house?

A. And rested, and then after I found out I had tuberculosis, after the Army turned me down, I went to the [21] clinics.

Q. Are you married? A. Yes.

Q. Any children? A. No, sir.

Q. Are your mother and father living?

A. Yes.

Q. Any brothers or sisters? A. Yes.

Q. How many?

A. One brother and two sisters.

Q. Any sisters dead? A. No.

Q. Any brothers dead? A. Yes, one.

Q. Older or younger? A. Older.

Q. What was the cause of his death?

A. Cancer of the throat.

Q. Your father and mother are still living?

A. Yes.

(Testimony of William Donoho.)

Q. Do you know of any members of your family other than those I have just mentioned who have had tuberculosis? A. No.

Q. Did you understand my question? [22]

Mr. Pillsbury: Have any members of the family had tuberculosis?

A. No, not that I know of.

Mr. Weingand: Q. Now going back to this pre-employment physical examination, it was made at Long Beach? A. Yes, at the Navy there.

Q. You know what a fluoroscope is?

A. Yes.

Q. And will you state if the doctor in attendance fluoroscoped you?

A. Not the doctor named in this report, but another man upstairs.

Q. You have seen a fluoroscope?

A. Yes, I have been examined by one every week.

Q. And the fluoroscope was similar to the kind Dr. Ford uses? A. Yes.

Q. And I believe you said you had a blood test?

A. Yes.

Q. That was a Wasserman for syphilis?

A. I don't know whether Wasserman or Kahn.

Q. You didn't have a skin patch test, did you?

A. No.

Q. I believe that you didn't have an examination made of your sputum? [23]

A. No, that is stated on the back of the medical.

Q. Have you ever had any respiratory trouble?

A. No. I have had my nose broken.

(Testimony of William Donoho.)

Q. Pneumonia? A. No.

Q. Influenza? A. Not to my knowledge.

Q. Any trouble with your lungs before?

A. The only thing I ever had is childhood diseases and I don't remember which ones I had.

Q. You don't know of any particular reason why your chest should be fluoroscoped?

A. No, not unless it was a routine check.

Mr. Pillsbury: Doctor, may we take your testimony?

DR. JAMES B. FORD, JR.,

having been first duly sworn, testified as follows:

Mr. Pillsbury: Q. Your full name, please?

A. James B. Ford, Jr.

Q. And you are a physician and surgeon?

A. Physician and surgeon licensed in California.

Q. Of what school, Doctor?

A. Duke University.

Q. And you are an intern?

A. Resident physician.

Q. What is the diagnosis for Mr. Donoho? [24]

A. Far advanced pulmonary tuberculosis.

Q. And can you state, Doctor, an estimate from your X-rays and examination as to its possible duration?

A. You can't. There is no film to compare previous to infection. You can't state from our present X-rays.

(Testimony of Dr. James B. Ford, Jr.)

Q. Can you state whether the condition as you find it could reasonably have developed since March, 1942, or whether it is necessarily older?

A. I could definitely state that it could have developed since March 1942.

Q. And is it consistent with his fatigue beginning at that time that he has testified to in the summer of 1942?

A. That is a very common symptom of early tuberculosis.

Q. And is it consistent with the medical information you have that it could have started then?

A. Yes.

Q. Is there any indication in the X-rays or evidence you have that there may have been an earlier or arrested or inactive condition?

A. It is not possible to state that. The X-ray showed that he had a mixed type, which we speak of, as showing some active and some healed tuberculosis together, but we cannot state that that healed lesion has been there for a long time. The process of tuberculosis is progressive and healing, and all steps can occur at the same time, and having had a certain [25] amount of rest he could have healed some.

Q. Can you express an opinion as to whether his case is one of primary tuberculosis starting about the summer of 1942, or whether it might be a reactivation or acceleration of an earlier condition?

A. I could not state now.

(Testimony of Dr. James B. Ford, Jr.)

Q. With reference to the conditions that he has discussed of his employment, the nature of his work during the rainy season, working 12 to 18 hours a day during the time the fatigue started, exposure to rains, temperature between 90 to 100, working in the tropics, whether any of those conditions would have any substantial influence in his developing tuberculosis at the time we assume he did? That is, was there any specific or greater exposure by reason of those conditions than ordinary?

A. Of course, it is not possible to develop tuberculosis without exposure to the tubercle bacillus. However, with exposure to the disease, I think that working long hours and in bad weather, it would tend to lower the general physical condition of the patient and would have influence on that.

Q. How about frequent exposure to rains and getting wet?

A. I think that would tend to lower his general physical condition.

Q. You have heard his testimony about two or more men on the job coming back here with tuberculosis. Would his [26] contact with them as he described it be a possible cause of his getting the disease?

A. His contact with these two individuals was not very close as he described it. However, it is possible to contract tuberculosis through casual contact with individuals. However, I could not say that this was his exposure. It could have been elsewhere.

(Testimony of Dr. James B. Ford, Jr.)

Q. How accurate do you think a fluoroscope examination at the time he entered the employment would be in determining whether he had tuberculosis?

A. It is not as accurate as an X-ray. You can pick it up by a fluoroscope examination, but you can't definitely rule it out.

Mr. Weingand: Q. Doctor, as I understand your testimony you stated that Mr. Donoho might have contracted this disease since the summer of 1942. Isn't it equally possible that he might have contracted the disease prior to the summer of 1942?

A. Yes.

Q. In other words, it seems a matter of guess work to try to determine the date of onset of this condition?

A. The date of onset cannot be determined.

Q. Is it a respecter of a particular race or class of individuals?

A. Tuberculosis is no respecter of races. Some races seem to be more susceptible. [27]

Q. Is it a respecter of sex? A. No.

Q. Or of age? A. No.

Q. And in your experience, Doctor, you have seen hundreds of patients who have tuberculosis?

A. Yes.

Q. And many of them who have had no exposure to the tropics? A. Oh, yes.

Q. And who have not been subjected to a wetting in tropical rains? A. Yes.

(Testimony of Dr. James B. Ford, Jr.)

Q. And who have led sedentary lives?

A. Yes.

Q. And persons who have not overworked?

A. Yes.

Mr. Pillsbury: Q. Doctor, I think you stated that it was equally possible that he had had the tuberculosis before. Is there any preponderance of probability one way or the other, considering the history given? In other words, might not his testimony that he felt his first acute fatigue during the period of this long work and of exposure, and the absence of any finding of tuberculosis at an earlier date, make it more possible that he contracted it in the fall or summer of [28] 1942 than at any other time?

A. Well, that is the first subjective symptom. That is the first thing he noticed, his fatigue, and that is a common symptom of active tuberculosis. I cannot say that the disease started at this time, although it is quite possible that it did.

Q. In view of the whole history it is not a little more likely that it started at the time this fatigue started? A. I would think so.

Mr. Weingand: Q. You cannot make that statement with any assurance of certainty?

A. No, I can't make it a definite statement.

Q. Doctor, this tuberculosis is a slow process in its development, isn't it?

A. That depends on the individual case.

Q. And I believe you said that Mr. Donoho's condition is——

(Testimony of Dr. James B. Ford, Jr.)

A. Far advanced. That was the diagnosis on admission.

Mr. Pillsbury: Q. Bilateral?

A. Yes.

Mr. Weingand: Q. That would normally indicate that it had been there for a considerable period of time?

A. I don't know what you mean by a long time.

Q. Longer than a month. Can we have this condition within a month of a primary infection?

A. I would not say as a rule. [29]

Mr. Pillsbury: A month is a short time.

Mr. Weingand: I was going to say next six months or a year.

Q. In other words, Doctor, isn't it a fact that the farther advanced the particular case may be, generally the longer it has been in existence?

A. Well, I want to make a statement here that is fair. You know the development of tuberculosis depends on a number of different factors, and I would say that with far advanced tuberculosis you would expect that it had not developed in a period of a month, but it is quite possible for that much to develop in a period of six months.

Q. That is the same quantity of disease which Mr. Donoho has? A. Yes.

Q. How long have you specialized in diseases of the chest? A. Almost three years.

Q. And prior to that time what?

A. I graduated from medical school in December, 1939.

Q. Interned?

(Testimony of Dr. James B. Ford, Jr.)

A. My general internship was taken at Grady Hospital from July 1, 1942 to July 1, 1943. I began my tuberculosis work in January 1940, and continued for a period of two and one-half years up to July 1, 1942, and I have been employed [30] at Olive View since July, 1943.

Q. Doctor, during that period of time have you taken care of or observed or examined patients from the tropics other than Mr. Donoho?

A. No.

Q. Do you have any literature, Doctor, to support your statement that in your opinion exposure to tropical rain, such as described——

Mr. Pillsbury: Repeated exposure.

Mr. Weingand: Q. ——could aggravate or accelerate the growth of the disease?

A. Yes. However, I think that if he is exposed to bad weather the effect would be the same here as in the tropics.

Q. Do you have any literature to support you in this statement? A. Not that I can recall.

Q. Of course, when a patient has tuberculosis any type of endeavor is contraindicated, is that true? A. Yes.

Q. That is why we have the sanitarium and we put Mr. Donoho to bed.

Mr. Pillsbury: Q. Doctor, may tuberculosis move more rapidly in tropical climates than in temperate climates?

Mr. Weingand: If you know.

(Testimony of Dr. James B. Ford, Jr.)

A. I don't know according to the white race. I know [31] there are natives of tropical climates that seem to develop rapidly.

Q. Does the progress move faster?

A. It seems to be a more virulent type of tuberculosis.

Mr. Pillsbury: That is among the natives.

Mr. Weingand: Q. You are talking——

A. I could not state as to the white race in a tropical climate.

Q. Doctor, I take it the prognosis is guarded?

A. It is.

Mr. Pillsbury: Mr. Donoho, do you want to ask the doctor any questions?

Mr. Donoho: Q. In the setup of sterilization of the dishes and stuff in this mess hall, and different equipment used to eat out of, could tuberculosis bacillus be transferred say from person to plate and from plate to another person?

A. Oh, yes, it could. You mean after it has been sterilized?

Q. No, just plain washing without sterilization.

A. It is possible that it could be carried from one person to another.

Q. The facilities for washing the utensils and dishes, there was no sterilization and no disinfectant except the soap used in the water.

Mr. Pillsbury: The work was done by natives?
[32]

Mr. Donoho: Q. And if there was an infection

(Testimony of Dr. James B. Ford, Jr.)

among the natives it would be very possible that it could be transferred from a diseased person to a well person?

A. It can be transferred to a well person without there being actual contact between the two.

Q. You said there is a slow and a rapid case of tuberculosis? A. That is true.

Q. And then in the rapid case of tuberculosis you said inside of six months it could advance to my state? A. Yes.

Q. That I am advanced to now? A. Yes.

Q. And if it advanced to tuberculosis, I mean to the place where they could tell if I had tuberculosis or not, even the first steps, it is possible that I could show fatigue then just as well as after I was far advanced? A. Yes.

Q. In other words, when I first started showing fatigue I could have had tuberculosis in the first steps? A. Yes.

Q. And later on after I came back and worked harder it could have gotten to where it was more rapidly advancing on me? A. Yes. [33]

Q. In other words then, I could have had tuberculosis in a far advanced stage and still gained and picked up weight to the place I am now although I have taken rest? After I got back from down there I could have showed improvement and still had it in far advanced stages? A. Yes.

Mr. Weingand: Q. Doctor, could Mr. Donoho have contracted this after his return in September of 1942? A. Yes, he could have.

(Testimony of Dr. James B. Ford, Jr.)

Q. You have heard his testimony that he was in Los Angeles from September until the following April? A. Yes.

Q. You do not know of course the source of the infection? A. No.

Q. Nor can you determine that with any certainty? A. That is correct.

Mr. Donoho: That is what I was trying to say, is that my stage could have been far advanced when I got back just as well as now even though I have taken rest.

Mr. Pillsbury: Does either side have anything more to offer or suggest?

Mr. Weingand: Mr. Pillsbury, I ask for a reasonable length of time within which to contact this Breman at Acton, and I think Dr. Frank Porter Miller examined you, didn't he? [34]

Mr. Donoho: I couldn't state his name. He examined and at that time he stated, with just a stethoscope examination, at the time he said that it was a childhood type of tuberculosis. I don't think that could be diagnosed with just a stethoscope examination.

Mr. Pillsbury: Did he have any X-rays taken?

Mr. Donoho: Later, after he told me that, he had an X-ray made, and then my wife called the insurance company and they said, why, I was developing sugar diabetes. Dr. Hoken run a test on me.

Mr. Weingand: Has Mr. Donoho shown any evidence of diabetes since being here?

(Testimony of Dr. James B. Ford, Jr.)

Dr. Ford: No.

Mr. Weingand: I have never seen the report of Dr. Miller.

Mr. Pillsbury: Do you desire to file the report now?

Mr. Weingand: I do.

Mr. Pillsbury: Granted.

Was any sugar test taken?

Dr. Ford: 90.3.

Mr. Pillsbury: Small.

Dr. Ford: Within normal.

Mr. Weingand: Thank you, Doctor.

Mr. Pillsbury: Either side is given 30 days in which to request further proceedings if further evidence should come to light. [35]

Mr. Weingand: Do you have any sickness insurance?

Mr. Donoho: Yes—no; no, I have a life insurance policy.

Mr. Weingand: Does it pay any health benefits?

Mr. Donoho: No, not that I know of.

Mr. Weingand: Are you receiving any money from any insurance company by reason of your condition?

Mr. Donoho: None whatsoever.

* * * * *

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken

in the above matter at the hearing held on October 6, 1943.

HELEN SCHULKE

Reporter. [36]

EXHIBIT A

Los Angeles, Calif.

April 15, 1943

This is the report of William Donoho, age 28, born July 24, 1914, at Leavenworth, Kansas. I am married, and living with my wife, Rachel, at 1512 W. 27th St., Los Angeles, California. I have no children. This above address has been my home address since approximately Sept. 1, 1942. I was hired by Mr. Jamison of Contractors, Pacific Naval Air Bases, on February 27th, 1942, in Los Angeles, California. Prior to accepting this position I was engaged in nursing private cases for about four years. I am not a registered nurse. I worked steadily during that time, and went from one case to another. In that four year period I was not unemployed more than two weeks at any one time. I specialized in mental and alcoholic cases exclusively. When I was on a case, I worked 8 hours at a time. The shifts I worked varied with the cases. Sometimes day, sometimes night work. Before nursing private cases I was in the U. S. Army Medical Corps, a private. I was in the Service three years. I was stationed at Fort Leavenworth, Kansas and Barksdale Field, La. After signing the contract of hire on February 27th, 1942,

I stayed in San Francisco a week. I left the United States on March 4th, 1942, destination Samoa. I signed the contract of hire with the knowledge that I was to work in Samoa, T. H. I was hired as a male nurse. It was my understanding that a doctor

W.D.

was to go to Samoa ~~with me~~ right after I did, but he never came, so the Navy took over the cases requiring medical treatment there, and I became a steward in the Mess Hall for P.N.A.B. I arrived in Samoa about March 15. There were quarters ready for us when we arrived, two men to a room. The barracks were newly built, about two feet from the ground. The climate in Samoa is sultry. It has intermittent cloudbursts, every half hour or so during the rainy season. Between showers the sun shines and you can see the steam come from the ground. When it doesn't rain, it is sultry and hot. It is very humid atmosphere. I worked in the Mess Hall every day I was in Samoa—i.e. 7 days per week. I worked from 10 to 12 hrs. per day, and on some days 16 hours. My contract called for a flat salary of \$150.00 per month. When I became a steward my pay rate was changed to \$1.25 per hour, with time and a half for any time worked in excess of 8 hours per day. My average monthly earnings varied from \$325.00 to \$375.00 per month. My duties consisted of managing the Mess Hall at Taufer, a small village. I was overseer of barracks and small cottages occupied by employees of P.N.A.B. At the Mess Hall, we served about 250

meals per day. We had cooks from the States, but natives did all the service, & cleaning up, etc. I did not come in contact with the food at all. I did all the procurement work for food & barracks supplies. I got up at 4:00 A.M. every day, and didn't get to bed until 9:00 or 10:00 P.M. Due to the heat and humidity, I found sleep not very restful, and too, I was often awakened by members of the night shift with problems they wished to discuss. I noticed, of course, a certain amount of fatigue, but considered this to be a normal result of the climate and hard work. Everyone else felt the same way. I was so busy every day all day that I had no time to analyze my feelings one way or the other. I never did reach a point of exhaustion, or what I would term abnormally tired. I suffered no fainting spells, dizziness, nausea, nor illness of any kind while I was in Samoa. I stayed in Samoa until about the middle of September. About four weeks before we sailed, the Naval Construction Battalion personnel moved in and took over our barracks, so for the last month, we had to double up and sleep four in a room. The C-Bees took over our work there, and we were relieved. On around Sept. 15, 1942, I sailed for the States. We arrived home & were paid off around the 25th of Sept. 1942. We disembarked in San Diego & came to Los Angeles by train. I went directly to my home. After I got home I suffered constantly from a general fatigue. I just never did have the energy to line up any work for myself. I never had any physical discomfort

other than fatigue. I had no symptoms of any kind. I decided this tired feeling was a result of over-work in Samoa. I ate the best food I could get, and rested all the time, and I gained 27 lbs. since I returned from Samoa, but I can't get rid of this

W.D.

constant fatigue. I didn't work at all, and ~~on~~ the last part of February I received my notice to appear for Physical Examination from the draft board. When I was examined by the Army doctor, I was informed that I was suffering from pulmonary tuberculosis in the active stage. On this basis I was placed in 4-F classification & deferred. I then went to the City Health Dept. & was examined and X-rayed. They told me the same thing, and recommended that I apply for admission to a sanatorium. The City doctor who examined me, Dr. Vera Waegel, M.D., stated that there is a possibility that this condition may arise from my employment in Samoa, and the representative of Olive View Sanatorium where I have applied for admission, said I couldn't be admitted there until I had made claim & settled the matter one way or the other, because once treatment is commenced in their institution, they do not want me disturbed by outside influences or business cares. I was told I could make claim under Compensation by Mrs. Edith H. League, a social worker, who visited me at my home. I have today made claim, and will await its disposition before taking any further steps. I still feel fine, & I have only the one symptom of constant fatigue. I have no cough, & have never spit blood.

I am ready for sanitarium placement now, and will be admitted as soon as disposition is made. I have never had any sickness other than common childhood diseases & have never been under the care of a physician in my life until now.

I have read this report on four pages and it is true.

WILLIAM DONOHO

(Copy)

Frank Porter Miller, M. D.
939 Pacific Mutual Building
Los Angeles, California
April 23, 1943

Liberty Mutual Ins. Co.,
714 S. Hill St.
Los Angeles, Calif.
Re: W. Donoho

Emp: Pacific Naval Air Base
Date of Inj. Feb. 1943

Gentlemen:

As per your request, the above named applicant appeared at our office for an examination 4-19-43. He gives his home address as 1512 W. 27th St., Los Angeles. He is 28 years of age, born in Kansas in 1914. His normal weight is 155 pounds. Present and greatest weight 172. He gives his occupation as that of a male nurse and steward.

Family History: His father, W. J. Donoho, was born in Kansas, is 54 years of age and well. His mother, N. Bishop, was born in Kansas, is 53 years of age and well. No brothers living. One brother dead from cancer of the throat. Two sisters living and well, none dead.

Previous Diseases: Usual diseases of childhood, but cannot recollect the exact ones, but he is certain that the convalescence was uneventful. No pneumonia, influenza, pleurisy or blood spitting. No operative work of any character. Had his right arm broken as a youngster. No other accidents.

Occupational History: Graduated from high school in 1934. He then went into the Army Medical Corps in 1935 at Fort Leavenworth, Kansas, as a clerk in the out-patient department. Remained in the Army for 3 years. Discharged as physically fit in 1938. Came to Los Angeles in 1938 and began male nursing on alcoholics and mental cases. Nursed until he went to Samoa in February, 1942. He was hired as a nurse by Pacific Naval Air Base, but due to the fact that the Navy took over the medical end, he was transferred as a steward in the mess hall. Was in their employ from February to September, 1942. Returned to the Mainland in September 1942. Has done no work since this time.

Present History: In February 1943 he was examined by the Navy at Long Beach and pronounced fit for foreign service. No x-ray was taken at this time. In February 1943 was examined by the Army for induction purposes and rejected, because

of tuberculosis. He reported to the City Health Clinic and they confirmed the diagnosis. Was sent to Los Angeles County General Hospital for an x-ray. For the past six months he has not attempted to work. Has not felt badly except a bit "run down". Does not cough or expectorate any sputum. Sputum was positive at the City Health Clinic.

Physical Examination: Scalp negative. Eyes react normally both to light and accommodation. There is a slight nasal obstruction with a deviation of the septum to the left. Complete absence of any cervical glands. Thyroid is normal as regards size, shape and consistency. Teeth are in fair dental repair. There is an absentee bicuspid and first molar on the right below. Pharynx is markedly injected. Tonsils are only slightly visible.

Chest: There is some tension in the shoulder girdle group of muscles on the left side. The mobility at all four poles is more or less equal. The degeneration of the skin and subcutaneous tissue is only noticeable above the spine of the scapula posteriorly and a marked degeneration through the interhiler area upon either side. The breath sounds upon the right are characterized by harshness and a slight amount of roughness, both anteriorly and posteriorly. Upon the left side roughness is the predominant note and posteriorly we find a few rales at the apex following an expiratory cough. The infiltration is largely above the second rib anteriorly and the midscapular area posteriorly upon either side. Heart sounds are rather rapid but free from any evidence of adventitious murmurs.

Blood pressure 146-86. Pulse rate 90. The patient is very apprehensive and the abdomen is very taut. Liver, kidneys and spleen are not palpable. There were no areas or masses discernable in the abdomen. Genito-urinary negative. Reflexes physiologic. An inventory of the remaining systems failed to reveal any additional pathology.

Laboratory Findings:

Blood Count:

Hemoglobin: 104%	Poly: 68%	Base: 1%
Erythrocytes: 4,850,000	Lymph: 27%	
Color Index: 1.0	Mono: 3%	
Leukocytes: 7,350		

Urinalysis:

Color: straw	Albumen: negative
Reac.: pH 5.0	Sugar: + + + + (2%)
Sp. Grav.: 1.029	Micro: occasional pus cell

X-Ray Findings: An x-ray picture taken 4-19-43 shows the cardiac shadows more or less perpendicular. The contours of the diaphragm appears to be normal and the angles are unobliterated. There is a marked sized hilus infiltration with some calcified plaques within its confines. Above the third rib anteriorly on the left we find a scattered infection with very little breaking down of the tissues, although there is some suggestion of excavation above the left clavicle. Above the second rib on the right we also have this scattered infection which is characterized by infiltration plus a certain amount of fibrosis. From an x-ray viewpoint, this man is definitely suffering from an active type of tuberculosis

at this time, although it has the ear marks of some chronicity.

Conclusions: Here is an individual who was sent to Samoa as a male nurse but due to the fact that doctors were very scarce, it became necessary that the Navy take over the medical supervision. Due to this fact, he was transferred as a steward in the mess hall and that was his employment while with the Pacific Naval Air Base. It seems superfluous to discuss at length the mere fact that a man develops tuberculosis because he becomes a resident in the tropics and I doubt whether that has any bearing upon the case. This case has been held in abeyance due to the fact that we wished to study the transcript. By the admission of the applicant, he states that he began feeling badly two or three months after arrival upon the islands. This in itself indicates the presence of the disease prior to his work at this defense base. A chronic form of tuberculosis is very slow and incidious in its onset and it is generally an accepted fact that these cases are ill at least twelve to 18 months prior to consulting a physician. He also makes mention of the fact that there were other men who later developed tuberculosis but one of these we might add, was unconfirmed. This form of contact with an ambulant case, is delving into the possibility which is most remote. For a long time I have attempted to show that a marked differentiation should be made between casual and intense exposure. By the latter I mean hospital personnel or one working in a tuber-

culosis ward. The casual exposure to which this man was subjected is the same type of exposure which each of us experiences practically every week of our life. It is my opinion that this is an old reactivated type of tuberculosis. There is nothing in medical literature which states that the rainy season in the tropics or elsewhere predisposes to the development of any upper respiratory or deep respiratory disease. If the rains and the wetting are to be attributed as causative factors, there should be an associated pneumonia or repeated colds, something which would act as a decided contributing factor. There is one other factor which is important and which I would like to stress. That is the type of infiltration which involves the upper portion of either chest. There is a definite granular appearance in both the right and left chest which is characterized by chronicity and it is my belief that this condition antedates many months his employment at Pacific Naval Air Base. After thoroughly scrutinizing all the facts incident with the case, I believe an unbiased opinion would be that industry had no connection with the man's unfortunate and present incapacity.

Very truly yours,

(Signed) FRANK PORTER MILLER

Frank Porter Miller, M.D.

FPM:RU

United States Employees' Compensation
Commission

13th Compensation District

DB-P-1-8359

In the matter of the claim for compensation under
the Act of Congress of August 16, 1941. De-
fense Bases Act)

WILLIAM DONOHO,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer.

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

COMPENSATION ORDER
AWARD OF COMPENSATION

Claim for compensation having been filed herein under the Act of Congress of August 16, 1941, for an injury occurring in the course of an employment on a military, air or naval base of the United States outside the continental United States, in the Pacific Compensation District, in the Territory of Hawaii, and said claim having been transferred to the undersigned Deputy Commissioner, 13th Compensation District, by the Deputy Commissioner of said Pacific Compensation District, with the approval of the United States Employees' Compensation Com-

mission, and such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That between March and September, 1942, the claimant above named was in the employ of the employer above named for the performance of service at a military base in a possession of the United States in the South Pacific region, in the Pacific Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by said Act of Congress of August 16, 1941, and that the liability of the employer for compensation under said Acts was insured by Liberty Mutual Insurance Company;

That while employed on said base claimant contracted an active pulmonary tuberculosis as a result of conditions of his employment as follows: Upon arriving at the base in March 19, 1942, claimant worked a short time as a male nurse. When the work was taken over by military authorities claimant worked for some weeks driving a truck. In the course of this work during the rainy season which prevailed at that time, he was wet through four or five times a day by rain. After some weeks he was assigned to work as a steward of the mess hall and continued in such capacity until he left the base in September. During this time he worked at least 12 hours a day and at times sixteen to eighteen

hours a day. The temperature at said base was between 90 and 100 degrees with high humidity most of the time. After working at said base two or three months he commenced to feel great fatigue which has continued from that time. He arrived at California after completion of his contract on September 25, 1942 and has done no work since because of said fatigue. In the Spring of 1943 he was examined for military service at which time he was found to be suffering from active pulmonary tuberculosis and was put in a hospital shortly afterwards. He is still hospitalized at the present time. That said active tuberculosis was caused to develop and become disabling either by contraction of original infection from unknown sources or by reactivation of a previous undiscovered and arrested pulmonary tuberculosis, by conditions of his employment above mentioned, principally overwork and exposure;

That defendants had notice of claimant's contention within proper time;

That the employer did not furnish claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act, after being notified of its discovery; That claimant was thereafter hospitalized in the Los Angeles County tuberculosis hospital at Olive View; That defendants are liable for the reasonable cost of said care, if charge be made therefor, the amount to be fixed by further proceedings if the parties are unable to agree thereon.

That the average annual earnings of the claimant herein at the time of his injury exceeded the maxi-

mum sum proscribed by said Act of \$1950.00, his actual earnings in said employment being \$85.00 a week;

That as the result of the injury sustained the claimant was wholly disabled from September 25, 1942 indefinitely, and he is entitled to compensation at \$25.00 a week for such disability to and including the date of the hearing. October 6, 1943, 53 6/7 weeks, amounting to \$1346.42, and thereafter at said rate until the termination of his disability or the further order of the Deputy Commissioner. That no compensation has been paid;

Upon the foregoing facts, the Deputy Commissioner make the following:

AWARD

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to the claimant compensation as follows: The sum of \$1346.42 forthwith, as of October 6, 1943, and the further sum to claimant of \$25.00 a week thereafter, payable in installments each two weeks until the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 24th day of February, 1944.

WARREN H. PILLSBURY

Deputy Commissioner

13th Compensation District.

WH.P:pr

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order—Award of Compensation was sent by registered mail to the claimant, the employer and the insurance carrier at the last known address of each as follows:

Mr. William Donoho, Olive View Sanitarium, San Fernando, Cal.

Contractors, P.N.A.B., 2129 Grove St., Oakland, 4, Calif.

Liberty Mutual Ins. Co., 714 S. Hill St., Los Angeles, Calif.

By regular mail to:

Mr. Claude F. Weingand, Attorney, 939 Rowan Bldg., Los Angeles, California.

Mr. C. B. Morris, Attorney, Mills Bldg., San Francisco, Calif.

Mr. A. J. Cyr, Acting Deputy Commissioner, U.S.E.C.C., 407 Hawaiian Trust Building, Honolulu, 48, T. H.

United States Employees' Compensation Commission, Attention: Mr. W. D. Driscoll, Asst. Sec., 285 Madison Avenue, New York, 17, N. Y.

Mailed

.....

Deputy Commissioner

[Endorsed]: No. 10950. United States Circuit Court of Appeals for the Ninth Circuit. Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company, a corporation, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission for the Thirteenth Compensation District and William Donoho, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 20, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10950

CONTRACTORS, PACIFIC NAVAL AIR
BASES and LIBERTY MUTUAL INSUR-
ANCE COMPANY, a corporation,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, United States Employees Compensa-
tion Commission for the Thirteenth Compen-
sation District, and WILLIAM DONOHO,

Respondents.

STATEMENT OF POINTS ON APPEAL

Appellants Contractors Pacific Naval Air Bases and Liberty Mutual Insurance Company, a corporation, do hereby formally adopt the Statement of Points upon which Appellants Intend to Rely in the appeal of this case filed by them in the above entitled case with the Clerk of the United States District Court for the Northern District of California, Southern Division, as appellants' Statement of Points upon this appeal.

Dated December 28, 1944.

CLAUDE F. WEINGAND

By [ILLEGIBLE]

Attorney for Appellants

[Endorsed]: Filed Dec. 29, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit:

Appellants hereby designate for the printed record the following parts of the certified transcript of the record on appeal in the above entitled matter:

1. Complaint for Injunction.
2. Motion to Dismiss Bill of Complaint.
3. Order of Dismissal dated September 13, 1944.
4. Transcript of Testimony in above cause and at hearing before United States Employees Compensation Commissioner Warren H. Pillsbury, Deputy Commissioner, Thirteenth Compensation District held October 6, 1943.
5. Notice of Appeal.
6. Supersedeas and Cost Bond on Appeal.
7. Designation of Record on Appeal.
8. Statement of Points Upon Which Appellants intend to Rely in the appeal in this case.
9. Clerk's Certificate.
10. Statement of Points on Appeal After Filing in Circuit Court of Appeals.
11. This Designation of Part of Record to be Printed and Filed in Circuit Court of Appeals.

Dated this 28th day of December, 1944.

CLAUDE F. WEINGAND,
Attorney for Appellants

[Endorsed]: Filed Dec. 29, 1944. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ADDITIONAL DESIGNATION OF PARTS
OF RECORD TO BE PRINTED

Respondents hereby designate for the printed record, in addition to all designations requested by the Complainants, the complete file of the United States Employees' Compensation Commissioner on file herein, including the Findings of Fact and Award of Compensation.

Dated: This 6th day of January, 1945.

FRANK J. HENNESSY

United States Attorney.

[Endorsed]: Filed Jan. 6, 1945. Paul P.
O'Brien, Clerk.